ESTTA Tracking number: **ESTTA724442**

Filing date: **02/02/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061571
Party	Plaintiff Gestion Diane Lanctot Ltee
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Attachments	Response to Motion to Compel.pdf(133611 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GESTION DIANE LANCTÔT LTÉE, Petitioner, v. IVO N. NJABE, Respondent.	In the matter of Trademark Registration No. 4,299,998 For the mark NIVO (Stylized) Registered on March 12, 2013 Cancellation No. **92061571**

PETITIONER'S RESPONSE TO RESPONDENT'S "MOTION TO COMPEL"

Petitioner GESTION DIANE LANCTÔT LTÉE (hereinafter, "Petitioner") files this paper in response to Respondent's filing dated January 11, 2016, which was styled a "Motion to Compel." *See* Docket Entry No. 7. As an initial matter, Petitioner informs the Board that this filing was never served on Petitioner, and as a result Petitioner was unaware of it until less than one day ago. Petitioner only became aware of this purported "motion" at approximately midnight on February 1, 2016, because it was referenced in another of Respondent's filings. *See* Docket Entry No. 9. Despite this and despite the lack of a motion included in the filing, as well as the unreasonableness of any motion that could have been brought, Petitioner files this response out of abundance of caution and to clarify the record.

I. RESPONDENT'S FILING IS NOT A MOTION

Although filed as a "motion," the filing consists only of Respondent's discovery requests which were served on Petitioner on December 26, 2015. Respondent has been previously informed in this case that such discovery requests "should not be filed." *See* Docket Entry No. 6 ("On August 31, 2015, Respondent filed with the Board a copy of its

initial disclosures. Written disclosures, as with requests for discovery, responses thereto, and materials or depositions obtained through the disclosure or discovery process, should not be filed with the Board except when submitted (1) with a motion relating to discovery . . . .") (emphasis added); *see also* Trademark Rule 2.120(j)(8); TBMP § 704.09.

Respondent's discovery requests are not attached to any motion; rather, they purport to be the motion. Respondent's filing is improper in that, at the very least, it does not provide anything for Petitioner to respond to nor does it provide the Board with any basis to grant or deny any relief sought by Respondent.

II. RESPONDENT'S FILING WAS NEVER SERVED ON PETITIONER

Respondent did not serve Petitioner with its January 11, 2016 filing at the time it was filed as required by Trademark Rule 2.119(a), nor was this filing served at any subsequent time.

Respondent's filing does include a certificate of service. However, this is the original certificate of service of the discovery requests, which were served on Petitioner on the date reflected. When Respondent filed these requests with the Board, calling it a motion, it was not served on Petitioner. Petitioner was not aware of this filing until it was referenced in Respondent's Docket Entry No. 9. The reference to a "motion to compel" in that filing prompted a review of the docket, at which time Petitioner became aware of the filed document. Petitioner immediately prepared and filed this response.

Not only was this filing never served, but Respondent did not make Petitioner aware of it in any manner whatsoever, either before or after it was filed. Importantly, no meet-and-confer was attempted by Respondent regarding this motion. The Board requires parties to engage in good faith attempts to resolve discovery disputes.

Trademark Rule 2.120(e). No such attempts have been made by Respondent to discuss or resolve any concerns Respondent has regarding discovery, either in connection with the filing of Docket Entry No. 7, or at any subsequent time.

Petitioner acknowledges that, from the docket entries it may appear to the Board that this response to Respondent's filing is untimely. However, Petitioner has 15 days from the date of service to file its response. Trademark Rule 2.127(a). Not only is it unclear what Petitioner should be responding to, but Respondent's filing has never been served upon Petitioner. Petitioner filed this response within one day of becoming aware of the filing through its own efforts.

Even if Respondent's filing is treated as a motion, it should be denied on this lack of service alone. To the extent it is not treated as a motion, Petitioner requests that this filing simply be stricken from the record.

III. RESPONDENT'S FILING IS UNTIMELY

Respondent filed its "motion" only 16 days after it served its discovery requests.[1] Petitioner was not required to respond to Respondent's discovery requests in such a short amount of time, and in fact could not have responded within that time.

Even if Respondent's filing is treated as a motion, it should be denied on this basis alone. Moving to compel discovery responses within 16 days is improper, groundless, and unreasonable.

IV. CONCLUSION

For all of the foregoing reasons, Petitioner requests that Respondent's filing be stricken from the record or, to the extent it is treated as a motion, denied.

[1] The certificate of service attached to Respondent's February 1, 20116 filing shows that Respondent's discovery requests were served on Petitioner on December 26, 2015. *See* Docket Entry No. 7.

This the 2nd day of February, 2016.

Respectfully submitted,

/s/ Peter D. Siddoway

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on February 2, 2016, I caused a copy of the foregoing **PETITIONER'S RESPONSE TO RESPONDENT'S "MOTION TO COMPEL"** to be served via e-mail and U.S. First Class Mail, as follows:

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